

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF PUERTO RICO

In the Matter Of:

WILLIAM COLON RODRIGUEZ  
ANNEL CRUZ CASTRO  
SSN: xxx-xx-9056  
SSN: xxx-xx-4573

Debtors

Case No. 12-05012 (ESL)

Chapter 13

MOTION TO DISMISS UNDER §1307(c)(6)

TO THE HONORABLE COURT:

COMES NOW, creditor POPULAR AUTO, INC., represented by the undersigned attorney and very respectfully alleges, states and prays as follows:

1. On June 27<sup>th</sup> 2012, debtors herein filed a bankruptcy petition under Chapter 13 of Title 11 of the United States Code.
2. Popular Auto, Inc. (hereinafter "Popular Auto") is a creditor of the above named debtors pursuant to 11 U.S.C. §101(10) and therefore, a party in interest in the instant proceeding.
3. On January 4<sup>th</sup> 2012, debtor William Colon Rodriguez subscribed with appearing creditor a Financial Lease Agreement, contract no. xx-xxx-xxxxx-xxx1899, regarding a 2011 Jeep Wrangler. The contract is payable in sixty (60) consecutive monthly installments of \$503.12 each that will expire by its own terms on December 4<sup>th</sup> 2016.

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4. Popular Auto filed the corresponding claim for this lease agreement on July 20<sup>th</sup> 2012. At the time of filing, debtors were current with the payments to appearing creditor. See claim no. 5-1. On May 20<sup>th</sup> 2013, the claim was amended to include some post-petition arrears incurred by the debtors (\$2,762.04). See amended claim no. 5-2.
5. A Post Confirmation Modification (PCM) dated August 22<sup>nd</sup> 2013 (docket no. 41), was filed by the debtors to include five (5) post-petition payments in arrears with appearing creditor regarding the lease agreement over the vehicle described in ¶ 3 of the foregoing motion. The PCM was approved by the court on January 14<sup>th</sup> 2014 (docket no. 56). The PCM provides for the payment of the post-petition arrears to Popular Auto through the plan and to continue making direct payments as they become due every fourth day of each month.
6. **At present, debtors have accumulated two (2) months in post-petition arrears with appearing creditor. The total amount in arrears is \$1,056.56 (\$503.12 + \$25.16 [late charge] = \$528.28 x 2).** The next payment on the lease is due on May 4<sup>th</sup> 2014 (next Sunday).
7. Popular Auto submits that debtors have defaulted in the terms and conditions of their PCM, having two (2) direct post-petition payments in arrears with appearing creditor.
8. Title 11 U.S.C. §1307 (c)(6) provides in pertinent part that:

“(c) Except as provided in subsection (e) of this section, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this

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chapter, whichever is in the best interests of creditors and the state, for cause, including-... **material default by the debtor with respect to a term of a confirmed plan.**" (Emphasis added).

WHEREFORE, creditor POPULAR AUTO, INC., respectfully requests this Honorable Court that an Order dismissing this case be entered for debtors' failure to comply with the requirements of 11 U.S.C. §1307(c)(6), and grant any such other remedy it may deem just and proper.

NOTICE IS HEREBY GIVEN THAT WITHIN THIRTY (30) DAYS AFTER SERVICE AS EVIDENCED BY THE CERTIFICATION, AND AN ADDITIONAL THREE (3) DAYS PURSUANT TO FED. R. BANK. P. 9006(f) IF YOU WERE SERVED BY MAIL, ANY PARTY AGAINST WHOM THIS PAPER HAS BEEN SERVED, OR ANY OTHER PARTY TO THE ACTION WHO OBJECTS TO THE RELIEF SOUGHT HEREIN, SHALL SERVE AND FILE AN OBJECTION OR OTHER APPROPRIATE RESPONSE TO THIS PAPER WITH THE CLERK'S OFFICE OF THE U.S. BANKRUPTCY COURT FOR THE DISTRICT OF PUERTO RICO. IF NO OBJECTION OR OTHER RESPONSE IS FILED WITHIN THE TIME ALLOWED HEREIN, THE PAPER WILL BE DEEMED UNOPPOSED AND MAY BE GRANTED UNLESS: (i) THE REQUESTED RELIEF IS FORBIDDEN BY LAW; (ii) THE REQUESTED RELIEF ITS AGAINST PUBLIC POLICY; (iii) IN THE OPINION OF THE COURT, THE INTEREST OF JUSTICE REQUIRES OTHERWISE.

#### CERTIFICATE OF SERVICE

I HEREBY CERTIFY: That on April 29<sup>th</sup> 2014, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to the following: Mr. Roberto Figueroa Carrasquillo, Esq., Attorney for debtors; Mr. José R. Carrión Morales, Esq., Chapter 13 Trustee; and I hereby certify that I have mailed by the United States Postal Service the document to the following non CM/ECF participants: Mr. William Colon Rodriguez and Mrs. Annel Cruz Castro, Debtors, HC 03 Box 37258, Caguas, P.R. 00725; and to all parties in interest as per the attached master address list.

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Respectfully submitted in San Juan, Puerto Rico, this 29<sup>th</sup> day of April, 2014.

s/ EDGAR A. VEGA RIVERA  
EDGAR A. VEGA RIVERA, ESQ.  
USDC- PR 212210  
Attorney for Popular Auto  
Consumer Bankruptcy Department  
PO Box 366818  
San Juan, Puerto Rico 00936-6818  
Tel. (787) 753-7849; Fax. (787) 751-7827  
E-mail: edvega@bppr.com

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In the Matter Of:

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**ANNEL CRUZ CASTRO**  
SSN: xxx-xx-9056  
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Debtors

**CASE NO. 12-05012 (ESL)**

**CHAPTER 13**

**AFFIDAVIT FOR DEFAULT JUDGMENT PURSUANT TO SECTION 201(b)(4)**  
**OF THE SERVICE MEMBERS CIVIL RELIEF ACT OF 2003**

I, **Edgar A. Vega Rivera**, Attorney for the Consumer Bankruptcy Department of Banco Popular de Puerto Rico, declare under penalty of perjury the following:

That according to the enclosed certification, provided by the Department of Defense Manpower Data Center (DMDC), the Debtors are not in active duty or under call to active duty as members of the Army, Navy or Air Force of the United States of America; the National Guard; the Public Health Service or the National Oceanic and Atmospheric Administration.

In San Juan, Puerto Rico, this 29<sup>th</sup> day of April, 2014.

s/ **EDGAR A. VEGA RIVERA**



**Status Report  
Pursuant to Servicemembers Civil Relief Act**

Last Name: COLON-RODRIGUEZ

First Name: WILLIAM

Middle Name:

Active Duty Status As Of: Apr-29-2014

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects where the individual left active duty status within 367 days preceding the Active Duty Status Date			

The Member or His/Her Unit Was Notified of a Future Call-Up to Active Duty on Active Duty Status Date			
Order Notification Start Date	Order Notification End Date	Status	Service Component
NA	NA	No	NA
This response reflects whether the individual or his/her unit has received early notification to report for active duty			

Upon searching the data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the status of the individual on the active duty status date as to all branches of the Uniformed Services (Army, Navy, Marine Corps, Air Force, NOAA, Public Health, and Coast Guard). This status includes information on a Servicemember or his/her unit receiving notification of future orders to report for Active Duty.

*Mary M. Snavelly-Dixon*

Mary M. Snavelly-Dixon, Director  
 Department of Defense - Manpower Data Center  
 4800 Mark Center Drive, Suite 04E25  
 Arlington, VA 22350

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense (DoD) that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The DoD strongly supports the enforcement of the Servicemembers Civil Relief Act (50 USC App. § 501 et seq, as amended) (SCRA) (formerly known as the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced only a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual was on active duty for the active duty status date, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's status by contacting that person's Service via the "defenseink.mil" URL: <http://www.defenseink.mil/faq/pis/PC09SLDR.html>. If you have evidence the person was on active duty for the active duty status date and you fail to obtain this additional Service verification, punitive provisions of the SCRA may be invoked against you. See 50 USC App. § 521(c).

This response reflects the following information: (1) The individual's Active Duty status on the Active Duty Status Date (2) Whether the individual left Active Duty status within 367 days preceding the Active Duty Status Date (3) Whether the individual or his/her unit received early notification to report for active duty on the Active Duty Status Date.

### More information on "Active Duty Status"

Active duty status as reported in this certificate is defined in accordance with 10 USC § 101(d) (1). Prior to 2010 only some of the active duty periods less than 30 consecutive days in length were available. In the case of a member of the National Guard, this includes service under a call to active service authorized by the President or the Secretary of Defense under 32 USC § 502(f) for purposes of responding to a national emergency declared by the President and supported by Federal funds. All Active Guard Reserve (AGR) members must be assigned against an authorized mobilization position in the unit they support. This includes Navy Training and Administration of the Reserves (TARs), Marine Corps Active Reserve (ARs) and Coast Guard Reserve Program Administrator (RPAs). Active Duty status also applies to a Uniformed Service member who is an active duty commissioned officer of the U.S. Public Health Service or the National Oceanic and Atmospheric Administration (NOAA Commissioned Corps).

### Coverage Under the SCRA is Broader in Some Cases

Coverage under the SCRA is broader in some cases and includes some categories of persons on active duty for purposes of the SCRA who would not be reported as on Active Duty under this certificate. SCRA protections are for Title 10 and Title 14 active duty records for all the Uniformed Services periods. Title 32 periods of Active Duty are not covered by SCRA, as defined in accordance with 10 USC § 101(d)(1).

Many times orders are amended to extend the period of active duty, which would extend SCRA protections. Persons seeking to rely on this website certification should check to make sure the orders on which SCRA protections are based have not been amended to extend the inclusive dates of service. Furthermore, some protections of the SCRA may extend to persons who have received orders to report for active duty or to be inducted, but who have not actually begun active duty or actually reported for induction. The Last Date on Active Duty entry is important because a number of protections of the SCRA extend beyond the last dates of active duty.

Those who could rely on this certificate are urged to seek qualified legal counsel to ensure that all rights guaranteed to Service members under the SCRA are protected

WARNING: This certificate was provided based on a last name, SSN/date of birth, and active duty status date provided by the requester. Providing erroneous information will cause an erroneous certificate to be provided.

Certificate ID: W966XE3330BBM90



**Status Report  
Pursuant to Servicemembers Civil Relief Act**

Last Name: CRUZ-CASTRO

First Name: ANNEL

Middle Name:

Active Duty Status As Of: Apr-29-2014

On Active Duty On Active Duty Status Date			
Active Duty Start Date	Active Duty End Date	Status	Service Component
NA	NA	No	NA
This response reflects the individuals' active duty status based on the Active Duty Status Date			

Left Active Duty Within 367 Days of Active Duty Status Date			
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NA	NA	No	NA
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*Mary M. Snavelly-Dixon*

Mary M. Snavelly-Dixon, Director  
 Department of Defense - Manpower Data Center  
 4800 Mark Center Drive, Suite 04E25  
 Arlington, VA 22350



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Certificate ID: A90EJE73I0BBP10

**12-05012-ESL13 WILLIAM COLON RODRIGUEZ and ANNEL CRUZ CASTRO**  
Case type: bk Chapter: 13 Asset: Yes Vol: v Bankruptcy Judge: ENRIQUE S. LAMOUTTE  
INCLAN  
Date filed: 06/27/2012 Date of last filing: 01/17/2014 Plan confirmed: 11/20/2012

## Creditors

<b>CitiFinacial, Inc</b> PO Box 70919 Charlotte, NC 28272-0919	(3553181) (cr)
<b>ASOCIACION DE EMPLEADOS DE GOBIERNO DE PR</b>  P.O. BOX 364508 SAN JUAN PUERTO RICO 00936-4505	(3561867) (cr)
<b>ASOCIACION EMPLEADOS ELA</b> PO BOX 364508 SAN JUAN, PR 00936-4508	(3502146) (cr)
<b>Back Bowl I LLC, Series C</b> c/o Weinstein & Riley, P.S. 2001 Western Ave., Ste. 400 Seattle, WA 98121	(3560130) (cr)
<b>Back Bowl I LLC, Series C</b> c/o Weinstein & Riley, P.S. 2001 Western Ave., Ste. 400 Seattle, WA 98121	(3560131) (cr)
<b>BANCO POPULAR DE PR</b> LEASE PO BOX 364445 SAN JUAN, PR 00936-4445	(3502147) (cr)
<b>BANCO POPULAR DE PUERTO RICO</b> BANKRUPTCY DEPARTMENT PO BOX 366818 SAN JUAN PR 00936-6818	(3516187) (cr)
<b>CITIFINANCIAL PLUS</b> PO BOX 499 HANOVER, MD 21076-0499	(3502148) (cr)
<b>DEPARTMENT OF TREASURY</b> BANKRUPTCY SECTION (SUITE 1504) 235 AVE. ARTERIAL HOSTOS SAN JUAN, PR 00918-1454	(3611615) (cr)
<b>FIRST BANK</b> PO BOX 19327	(3502149)

SAN JUAN, PR 00910-1427	(cr)
<b>ISLAND FINANCE</b> PO BOX 195369 SAN JUAN, PR 00919-5369	(3502150) (cr)
<b>MONEY EXPRESS</b> BANKRUPTCY DIVISION PO BOX 9146 SAN JUAN,PR 00908-0146	(3508524) (cr)
<b>MONEY EXPRESS</b> PO BOX 9146 SAN JUAN, PR 00908-0146	(3502151) (cr)
<b>MUEBLERIA BERRIOS</b> PO BOX 674 CIDRA, PR 00739-0674	(3502152) (cr)
<b>Popular Auto</b> PO Box 15011 San Juan, PR 00902-8511	(3502153) (cr)
<b>POPULAR AUTO (POPULAR LEASING)</b> BANKRUPTCY DEPARTMENT PO BOX 366818 SAN JUAN PUERTO RICO 00936-6818	(3516188) (cr)
<b>PR TELEPHONE COMPANY</b> PO BOX 71401 SAN JUAN, PR 00936-8501	(3502154) (cr)
<b>SANTANDER FINANCIAL D/B/A ISLAND FINANCE</b> PO BOX 195369 SAN JUAN PR 00919-5369	(3508864) (cr)
<b>SANTANDER FINANCIAL D/B/A ISLAND FINANCE</b> PO BOX 195369 SAN JUAN PR 00919-5369	(3508866) (cr)
<b>SCOTIABANK</b> PO BOX 362649 SAN JUAN, PR 00936-2649	(3502155) (cr)
<b>SCOTIABANK DE PUERTO RICO</b> ISMAEL H. HERRERO III, ESQ P O BOX 362159 SAN JUAN PR 00936-2159	(3524893) (cr)
<b>SEARS</b> PO BOX 6189 SIOUX FALLS, SD 57117-6189	(3502156) (cr)